IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CONTEMPT APPEAL NO.4 OF 2003
IN
CONTEMPT PETITION NO.459 OF 2001

Mr. M.S. Rao,
Senior Inspector of Police,
M.R.A. Marg Police Station.
Mumbai 400 001.
....Appellant.

Vs.

1. Mr. Vinay Asharam Rathi,
   a Practising Advocate
   having his office situated at
   Building No.35,
   Ambalal Doshi Marg, 2nd floor,
   Room No.7, Fort,
   Mumbai 400 001.

2. The State of Maharashtra
   through the Home Department,
   Mantralaya, Mumbai-400 032.

3. M.N. Singh,
   Sagar Tarang, 6th floor,
   Worli Sea face,
   Mumbai-18.

....Respondents.

Ms. Manjula Rao with Tejas Mujumdar and Balkrishna D. Joshi for the Appellant.

Mr. R.S.Desai for the Respondent No.3.

Respondent No.2 served by hand delivery.

Respondent No.3 is served personally.

CORAM: S.B. MHASE &
R.S.MOHITE, JJ.

DATED: 5/11/2004.

ORAL JUDGMENT : (Per S.B. MHASE, J.)

1. The appellant has approached this court invoking our jurisdiction under Section 19 of the Contempt of Courts Act, 1971 whereby the appeal is directed against the Judgment and order passed in Civil Contempt Petition No. 459 of 2001, decided on 23.1.2003 by the Single Judge of this court, inter alia convicting the appellant for committing contempt of the order dated 31.5.2000, passed by the 33rd Metropolitan Magistrate, Mumbai thereby imposing a fine of Rs.2000/- with imprisonment till rising of the court.

2. Initially contempt petition was filed against the appellant Mr. M.V. Rao, Sr. Inspector of Police and Mr. M.M. Singh, Commissioner of Police and the State of Maharashtra. The prayer was made that the Hon'ble Court should punish the respondent Nos.1 and 2 with imprisonment and fine for intentionally and wilfully disobeying and defying the various orders and directions of the 33rd Metropolitan Magistrate Court, Ballard Pier, Bombay dated 31.5.2000 and 7.4.2000 inasmuch as the respondents be directed to explain the delay in complying with the aforesaid orders of the learned Magistrate of 33rd Metropolitan Court

immediately and to take action against the accused therein as per law, in Case No.8/I&R/1995 and Case No.31/I&R/95 pending with them since 1995. It is further prayed that the respondent No.3-State of Maharashtra be directed to take necessary departmental steps against the guilty one for the wilful and intentional neglect of the aforesaid orders of the Hon'ble Court and to bring to the book the guilty officials for disobeying, defying and neglecting the aforesaid directions and orders of 33rd Metropolitan Magistrate, Ballard Pier, Mumbai.

3. Thus, it was a contempt petition filed for civil contempt committed by the respondents 1 and 2 of certain orders passed by court, namely 33rd Metropolitan Magistrate Court, Ballard Pier, Bombay and thereby it was a petition invoking powers under Section 11 of this court which permits this court to take cognizance of the contempt of the Subordinate court. However, ultimately the Single Judge of this Court who heard this contempt petition had found the present appellant guilty under Contempt of Courts Act and has awarded punishment as stated above. Thus, it can be seen that out of the two prayers which were made in the contempt petition, the Single Judge had allowed only one prayer as against the appellant only. The original

respondent No.2 Mr. Singh, Commissioner of Police was not found guilty of any contempt and therefore, no action has been taken against Mr. Singh. So far as another prayer which was claimed as against the State of Maharashtra-Respondent No.3 seeking directions to take departmental steps against the guilty persons, the same was not granted by the Single Judge and therefore, we are called upon to consider the legality and validity of the order passed by the Single Judge, so far as the Single Judge holds the appellant guilty of the contempt of the court for not obeying the orders of the 33rd Metropolitan Magistrate Court, as prayed for.

4. Before we consider the appeal on merits, we would like to deal with the preliminary point raised by the respondent No.1 who appears in person. According to the respondent (i.e. original applicant) this appeal is not tenable. He challenges the tenability of this appeal on a ground that the contempt jurisdiction invoked by this court is under Article 215 of the Constitution of India and as per the Appellate Side Rules, the Chief Justice has placed the matter before the Single Judge for considering the contempt. According to him, in the said Rules there is no provision for the appeal from Single Judge to the Division Bench and therefore, unless and until the

appeal is provided in the Rules, appeal is not tenable before this court. The respondent party in person relied upon the Judgment of the Apex Court reported in **JT. 1997 (3) S.C. 47 in the matter of The High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore Yadav and others.** He also relied upon the Judgment of this court reported in **2004 (1) ALL MR 418 in the matter of Iridium India Telecom Ltd. Vs. Motorola Inc. and ors.** Equally he relied upon **JT. 2004(8) S.C. 163 in the matter of Prithawi Nath Ram Vs. State of Jharkhand and ors.** In order to oppose this point, the learned counsel for the appellant submitted that as per Rule 24 of the rules regulating proceeding for contempt under Article 215 and the Contempt of Courts Act,1971, every petition or reference in respect of the civil contempt be heard and disposed of by the Single Judge and accordingly petition has been disposed of by the Single Judge. The learned counsel then made reference to Section 19 of the Contempt of Courts Act that an appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt- where the order or decision is that of Single Judge, to a bench of not less than two Judges of the court and thus relied upon Section 19(a) for the maintainability of this appeal.

5. In order to test the submissions of Mr. Rathi who is party in person, we would like to point out that the case which is relied upon by Mr. Rathi, namely, JT. 1997(3) S.C. 47 in the matter of the High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore Yadav and others, does not deal with the point in respect of the maintainability of the appeal. But we have found that the Division Bench of the Allahabad High Court has taken a view that the contempt petition arising out of Article 215 of the Constitution of India shall be placed before the very court namely the bench of as a Single Judge or Division Bench, as the case may be, which has passed the order of which contempt is being alleged and thereby held that the Rule 4(a) of the said High Court rules is invalid and not legal one. While considering this aspect the Apex Court has ultimately concluded that the said rule 4(a) which allows the Chief Justice of the said High Court to place the matter of the civil contempt before the bench of the Single Judge constituted for that purpose is valid one and for that purpose the Apex Court has considered the scope of Article 215 of the Constitution of India and also the scope of Article 225 of the Constitution of India and Section 223 of the Government of India Act,1935 and Section 108 of the Government of

India Act 1915 and the Apex Court has ultimately found that rule framed by the High Court is legal one, since the power of the High Court and the Chief Justice to frame the rules flows from Section 108 of the Government of India Act 1915 which has been maintained in tact by Article 225 of the Constitution of India. But we have noted that this Judgment is not a Judgment on the point as to whether the appeal lies as against the order passed by the Single bench to which forum. This Judgment specifically does not lay down the law that, order passed by the Single Judge while considering civil contempt is not appealable to the Division Bench. We would like to point out that Rule 25 of our High Court also deals with this aspect and has made a provision that the matters of the civil contempt be placed before the Single Judge. The Contempt of Courts Act specifically has made a statutory provision providing for right of appeal and probably being aware of the fact that in many High Courts provisions have been made for placing the matters before the Single Judge. Provision has been made in Section-19 Sub Section (1) Clause (a) of Contempt of Courts Act that where the order or decision is of the Single Judge, appeal shall lie to a Division Bench of not less than two Judges of the court. This is a statutory provision has to be read with the rules

framed by the High Court and thus read together the only inference follows that whenever the matter has been dealt under Article 215 of the Constitution of India and the Contempt of Courts Act by a Single Judge, appeal shall lie to a bench of not less than two Judges of the same High Court. Ultimately, we find that the preliminary point raised by the respondent is without any merit. This Judgment is not applicable to the present case.

6. The other Judgment relied on by the party in person is **2004 (1) ALL MR 418 in the matter of Iridum India Telecom Ltd. Vs. Motorola Inc. and ors.** We have perused this Judgment and this Judgment deals with the point arising under the Civil Procedure Code amended by the Code of Civil Procedure (Amendment) Act, 2002 more specifically Order VIII Rule 1 and Section 148 of the Civil Procedure Code and the Bombay High Court Original Side Rules, Rule 265. The question which was considered is in respect of the fact that whether the time which was permitted under Order VIII Rule 1 for filing a written statement can be extended by invoking power under Section 148 and the other aspect which this Judgment considers is, the force of rule 264 of the Original Side Rules for the Order VIII Rule 1 and Section 148 of the Civil Procedure Code amended Act.

This case does not deal with any aspect of the Contempt of Courts Act and the tenability of the appeal filed under Contempt of Courts Act when the person is convicted for the civil contempt and therefore, reliance placed by the party in person is out of place.

7. The third Judgment relied upon by the party in person is **JT.2004 (8) SC 163 in the matter of Prithawi Nath Ram Vs. State of Jharkhand and ors.** This referred Judgment under the Contempt of Courts Act is not relevant for considering the point which is raised before us. In this case, the matter was placed before the Single Judge who considered as to whether the civil contempt has been committed by the contemnor. The Single Judge while considering the said contempt petition, instead of deciding as to whether the contempt has been committed or not, examined the correctness of the order passed by the Single Bench in Writ Petition and has come to the conclusion that the directions issued in the writ petition could not have been given and therefore, there was no scope for taking any action for contempt. While considering this aspect, the Apex Court has held that while dealing with an application for contempt, court is concerned with the question as to whether the earlier decision which has become final, has been complied with or not and it

was impermissible for the court to examine the correctness of the earlier decision which has not been assailed when that was taken earlier. Thus, what we find is that when a Single Judge dealing with contempt petition is going to consider as to whether the contempt has been committed or not and it is not empowered to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision and refuse to exercise power under Contempt of Court Act. We have exfacie held that the case does not deal with the point of tenability of the appeal filed by the parties under Section 19.

. We find that basically the petition has been filed by the party in person invoking the powers of this court under Section 11 of the Contempt of the Court Act. Section 11 states that High Court shall have jurisdiction to enquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the person alleged to be guilty of contempt is within or outside such limits. Thus, power to punish for Contempt of the subordinate court flows from the statutory provision of Section 11 of the Contempt of

Courts Act. Rule 24 framed under Article 215 of the Constitution of India and the Contempt of Courts Act permits filing of application for contempt. Rule 24 provides that every petition or reference in civil contempt including civil contempt of subordinate court shall be heard and disposed of by a Single Judge. Section 19 specifically provides that an appeal shall lie as of right, from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt.

> a) where the order or decision is that of a single judge, to a Bench of not less than two Judges of the Court; (rest of the portion is not relevant.)

On combine reading of these provisions, it follows that whenever a Single Judge convicts a person for civil contempt, appeal against that shall lie before the Division Bench to which the said assignment has been given by the Chief Justice and this matter has been assigned to us by the Chief Justice in the roster for hearing and therefore, we find that the appeal is tenable in law and we have a power and jurisdiction to decide this appeal. Accordingly, the preliminary point raised by the party in person is without any merit and

is hereby rejected.

8. Now coming to the main matter, the respondent No.1 party in person is a Advocate by profession and he is having his office at 35 Ambalal Doshi Marg, Mumbai. His office bears Cabin No.7 which is situated on the second floor of the said building and second floor is the top floor of the said building. There is a letter dated 5.6.1995 on record issued by the Occupants Association to Mr. Rathi-respondent No.1 that the premises are in dangerous condition and it requires immediate repairs and the respondent no.1 is requested to vacate the said cabin No.7 temporarily. From letter dated 5.6.1995, it appears that the request made by Mr. Rathi for alternate accommodation was not accepted and the respondent No.1 was further requested to vacate the said premises temporarily. It further appears that on 20.6.1995 Bombay Municipal Corporation published a notice and pasted it on the building mentioning therein that the building is in dangerous condition and it requires immediate repairs. On 28.6.1995, a notice had been issued by the Ward Officer whereby it was informed that the building was declared as dangerous for inhabitants and accordingly notice was pasted on the building on 28.6.1995. There is equally a letter from Architect Shah to vacate the building from ground to

top in order to avoid mishap. Further, it appears that the respondent No.1 had entered into this premises in 1991 as a licensee from Ram Gopal Gupta and licence fee agreed upon was Rs.2500/- per month. Said Ram Gopal Gupta is a tenant of the said premises since 1953 and he has given various premises of the said building on licence basis to the various licensees. It appears that there was a suit in between Ram Gopal Gupta and respondent No.1 Rathi in Small Causes Court bearing No.LE & C/50/62 of 1991 wherein the rent was agreed at Rs.3100/- and it was further agreed that the respondent No.1 would vacate the said premises on or before 30.4.1993 (While this Judgement was being dictated Mr. Rathi submitted that the rent was fixed at Rs.2100/- and equally Mr. Joshi submitted that the respondent no.1 agreed to vacate the said premises on 30.4.1994. However, we have dictated the dates from the report of the Police Officer dated 26.11.1998.) It is further to be noted that this statement which was recorded in the Small Causes Court was specifically challenged by respondent No.1 Rathi, however, unsuccessfully and that statement was confirmed upto the Supreme Court. However, the second round of litigation is going on between the parties.

9. The above referred background is pointed out only

to show the relations between the parties. This has nothing to do with the main matter which they are agitating before the civil court. However, it will be evident that the relations of the respondent No.1 with his licensor, namely Ram Gopal Gupta were absolutely strained, more specifically,- after recording of the statement in the Small Causes Court referred to above and especially when the steps were being taken for repairs of the said building and Ram Gopal Gupta was asking Mr. Rathi to vacate the said premises temporarily so as to carry out the repairs without allotting alternate premises to Mr. Rathi as claimed. Probably, Mr. Rathi is under impression that if he surrenders the said premises without getting alternate premises, he may not get back the premises again. However, if we consider the apprehension of Mr. Rathi in the background of the settlement arrived at in Small Causes Court, it speaks clear and we need not comment upon it. However, even though the settlement is recorded, it is permissible for the parties to agitate as against the said settlement, if permissible under law. Under this backdrop, from the record we find that number of complaints have been filed by Mr. Rathi against the said Ram Gopal Gupta, his servants, agents and his son Nilkumar Gupta. However, we need not go through all those complaints which had been lodged to

the police station. We are mainly concerned in this matter with Criminal Case No.8 I & R/95 filed on 14.2.1995 and Criminal Case No.31/I & R/95 filed on 21.7.1995. The chronological facts in respect of each case are as follows:

C.C.No.8/I & R/95

10. 1) Ram Gopal Gupta, 2) Neel Kumar Gupta and 3) Mrs. Geeta Kantharia are accused. Charge was levelled under Section-107,110,144 of the Criminal Procedure Code and under Section 34,379,380,386,427 and 506(II) of the Indian Penal Code. This case was filed in the court of 3 3rd Metropolitan Magistrate Court, Ballard Pier, Mumbai on 14.2.1995. It appears from the said complaint that prior to the filing of the said complaint, N.C. No.191 dated 9.2.1995 and N.C. No.195 dated 11.2.1995 were registered at M.R.A. Police Station. However, after reading the complaints except a reference of these non cognizable offences no other factual particulars have been reflected in these complaints. Except accusations, the factual particulars i.e. time of commission of offence, the suspected accused or known and not known, witnesses as to who have seen the incident and other particulars are lacking. In spite of lodging of such complaint, the

police have recorded the non cognizable offence. The respondent No.1 had approached the Magistrate by filing a complaint as stated above . On 14.2.1995 an order was passed by the Magistrate directing investigation by the police under section 156(3) of the Criminal Procedure Code and on the same day the matter was referred to M.R.A. Police Station from the office of the said Magistrate. On 2.8.1995, P.S.I. of the said Police Station had submitted a report to the said Magistrate. However, it appears that the Magistrate was not satisfied with the said report submitted by Mr. Ranaware because present respondent No.1 pointed out to the Magistrate that the report is vague. Therefore, by order dated 15.5.1998 the Magistrate directed the police to reinvestigate the case No.8/I&R/95. Thereafter, the reinvestigation has been carried out by the Police Inspector (Crime), M.R.A. Marg Police Station and the report to that effect was submitted to the Sr. Inspector of Police, M.R.A. Marg Police Station. After perusal of the said report then Sr. Inspector of the Police, M.R.A. Marg Police Station had made an endorsement on the said report "Submitted to the Hon’ble 33rd Metropolitan Magistrate, Ballard Pier, Mumbai with the above report of the Police Inspector (Crime) for favour of information". Thus, after reinvestigation the report was submitted to the

Metropolitan Magistrate Court. However, on 29.1.2000, the said case was taken on board by the respondent No.1 and it was pointed out that in spite of the directions to reinvestigate the matter, the report has not been submitted by the said Police Station and therefore, the 33rd Metropolitan Magistrate Court passed an order on the same day to issue reminder letter to M.R.A. Police Station. It is pertinent to note that even though the order was passed on 29.3.2000, the said order was not communicated on the same day to the police station. It was communicated to the Police Station on 7.4.2000 and immediately thereafter on 19.4.2000, respondent No.1 submitted complaint to the Commissioner of Police against the officers of the M.R.A. Marg Police Station that inspite of the directions given by the 33rd Metropolitan Magistrate Court, the police are not reinvestigating the case. On 31.5.2000, the respondent No.1 again moved the 33rd Metropolitan Magistrate Court upon which the court directed the M.R.A. Marg Police Station either to file a charge-sheet or propose summary, as early as possible. This order was communicated to Mr. Rao-appellant on 2.6.2000. After issuance of this order by the Metropolitan Magistrate Court on 2.6.2000 respondent No.1 again issued letter to the Commissioner for immediate action otherwise he would approach the High Court. On 14.6.2000, the

Investigating Officer Mr. Kasbekar issued a letter to the respondent No.1 to attend the Police Station for the purpose of investigation of the Criminal Case No..8/IR/1995 on 18.6.2000. On that day statement of Mr. Rathi was recorded. After confirming statement of respondent No.1 which was recorded by P.S.I. Ranaware when he submitted earlier report on 2.8.1995 and after recording further statement Crime No.5/2000 was registered by A.P.I. Kasbekar. Thereafter, after carrying out investigation, on 27.1.2001 a report was prepared by A.P.I. Kasbekar in order to submit the same to the 33rd Metropolitan Magistrate Court. It is further pertinent to note that on 7.4.2001 Sr. Inspector of the M.R.A. Marg Police Station informed the respondent No.1 that the report has been submitted to the Magistrate. On 31.5.2001 the respondent No.1 has taken the said Criminal case on board and submitted an application to confirm as to whether the police have lodged any report or not and that he requires the said report for the purpose of criminal case No.7/2001 and Contempt Petition No.12/2001. Then Metropolitan Magistrate has obtained a report from the office, namely Judicial Clerk as to whether such report has been received from the police station and having confirmed that such report is not received, issued notice to M.R.A.Marg Police Station. It appears that

Mr. Kasbekar who was Incharge of the investigation of this crime appeared before the Metropolitan Magistrate and submitted that sometime in January, 2001 he (Kasbekar) had submitted all papers alongwith his report of classification to P.I. M.R.A. Marg Police Station, since he was transferred from that police station. Thereafter, it appears that when it was found that the report has not been received by the Magistrate on 1.6.2001, the report was again submitted by the Sr. Police Inspector informing the Magistrate that after investigation was completed by A.P.I. Kasbekar, the opinion of the Police Prosecutor was obtained and the papers were submitted to the Asstt. Police Commissioner, Kalbadevi and after getting his approval those papers were submitted on 1.2.2001 to the court. Alongwith the said letter the papers which were with the police station were submitted to the Metropolitan Magistrate Court. All these were considered by the 33rd Metropolitan Magistrate on 25.6.2001 and the 33rd Metropolitan Magistrate had granted "C" summary.

C.C. No.31/I & R/1995

11. So far as the other case is concerned i.e. Criminal Case No.31/I & R/1995, in this case, the accused are Ram Gopal Gupta, Neel Kumar Gupta, Y.P.

Shah, Structural Engineer and Mr. Farookh, Works Contractor of United Construction and then Executive Engineer, Bombay Municipal Corporation, Ward-A and Ward Officer, Ward-A. It is pertinent to note that before filing of this private complaint in the court of Metropolitan Magistrate, no report in respect of the offence was lodged by the respondent No.1-complainant to the police station and directly complaint has been lodged. The said complaint was filed on 21.7.1995. The Magistrate directed investigation in the said complaint under Section 156(3) of the Criminal Procedure Code. It was sent to M.R.A. Marg Police Station. P.S.I. and Incharge M.R.A. Marg Police Station one Mr. S.B. Kale investigated the said complaint as per the directions of the Magistrate and submitted a report duly verified by Sr,. Inspector of the said Police Station on 14.12.1995 and thus, this report was received by the 33rd Metropolitan Magistrate. On 29.1.2000, respondent No.1 filed an application before the Metropolitan Magistrate and after hearing the respondent No.1, said Magistrate passed an order that "as per the submissions of Mr. Rathi matter be again sent to Police Station for filing report properly for considering the entire matter." This order of the 33rd Metropolitan Magistrate Court was communicated to the Police Station by letter dated

7.4.2000. On 31.5.2000 the 33rd Metropolitan Magistrate, after hearing the submissions of the respondent No.1, directed the police station to file either charge-sheet or a propose "C" summary as early as possible. On 2.6.2000 Mr. Rathi had given letter to the Commissioner making a grievance that inspite of the directions given by the Metropolitan Magistrate, reinvestigation is not being carried out by the Police Station Officers. On 7.7.2000, Crime No.6/2000 was registered. On 28.1.2001 report was prepared by A.S.I. Kasbekar. On 7.4.2001 Sr. Inspector of the said Police Station informed Mr. Rathi that the report has been submitted to the Metropolitan Magistrate. (This is a composite letter in respect of both the complaints). On 31.5.2001 the respondent No.1 had taken the case on board and submitted an application that he wants to confirm as to whether police report has been lodged or not and that he requires report in Contempt Petition No.12/2001. After making enquiry from the Judicial Clerk when it was found that the report has not been received, a notice was issued to the police station. Mr. Kasbekar remained present before the Metropolitan Magistrate and he reported the said Magistrate that some time in Jan.2001 he had submitted all papers alongwith his report for classification, to the Police Inspector of M.R.A. Marg

Police Station since he was transferred from the said police station. Since it was revealed that the report was not available with the court of 33rd Metropolitan Magistrate, on 1.6.2001, the report alongwith explanation of the Sr. Inspector was submitted to the Magistrate. Accepting the said report on 25.6.2001,"C" summary was granted.

12. Before we take into consideration the effect of the available facts, it is pertinent to note that the appellant was a Sr. Inspector of the M.R.A. Marg Police Station from 1.3.1999 to 18.1.2002 and thereafter he was transferred to Naigaon, Mumbai. Therefore, it is further to be noted from the above facts that responsibility of the appellant, if any, will be limited for a period from 1.3.1999 till the date of filing of the report in the Metropolitan Magistrate Court i.e. 1.6.2001. However, if we take into consideration the total conduct of the police officers in both the cases it will be found that the Cri. Case No..8/I & R/1995 was investigated by the Police Officers thrice. First it was investigated by P.S.I. Ranaware and the report was submitted on 2.8.1995. It was again reinvestigated and the report was submitted on 28.11.1998. It is pertinent to note that the said report was ignored and the reminders were

sent to the Police Station and the police by way of abundant precaution having found that the respondent is giving warning to them that he would approach the High Court, again started reinvestigation for the third time in the said case and the crime was registered on 18.6.2000 and the report was submitted. Thus, what is pertinent to note is that the case No.8/I&R/1995 was thrice investigated by the police and the report was submitted by the police. Even if we consider the period of court's order, it will show that when Mr. Rathi approached constantly to the Police Commissioner and the Magistrate on 19.4.2000 and immediately the letter was issued by Mr. Kasbekar to Mr. Rathi to remain present for recording his complaint and after recording his complaint the crime was registered and further investigation was also carried out by Mr. Kasbekar and he submitted his report as stated earlier. In respect of the second case, namely C.C.No.31/I&R/1995 is concerned, the investigation in the said crime was made on 14.12.1995 itself and thereafter, directions issued by the Magistrate were not for the reinvestigation of the said crime but the directions were to file a proper report after considering the entire material i.e. either to file a charge-sheet or to file a Summary report as early as possible. Inspite of that, what we find is that since

there was persistent attempt on the part of the respondent seeking investigation and repeated approach of the respondent to the superior officers of the police and the Magistrate, crime was registered by Mr. Kasbekar and the report was submitted by Mr. Kasbekar. What we find is that from 7.4.2000, investigation was carried out and the report was prepared by Mr. Kasbekar on 28.1.2001 i.e. within a period of 8 to 9 months. After preparation of the said report, as per the appellant's said report was submitted to the Metropolitan Magistrate Court on 1.2.2001. As against that, it was revealed, on 31.5.2001 that the said report was not with the Metropolitan Magistrate Court. However, when this fact was brought to the notice of the Metropolitan Magistrate by the appellant on 1.6.2001, the police have resubmitted the said report to the Metropolitan Magistrate Court alongwith explanation of all facts and the Metropolitan Magistrate Court has accepted the explanation offered by police and after considering report had granted "C" Summary. What is to be noted is the total conduct of the police officers, specially of the appellant and that the concerned Magistrate had no grievance in respect of investigation. The concerned Magistrate has not made any report under Section 15 of the Contempt of Courts Act to this court to take cognizance of the

contempt being committed by the police officers. Therefore, whatever the explanation given by the appellant had been accepted by the Magistrate who would have made a grievance in respect of disobedience of the orders passed by the said court. This has got some bearing on the contempt petition which has been filed by the present respondent No.1. The respondent No.1 claims that by late submission of the report by the police, the appellant had disobeyed the order of the Metropolitan Magistrate Court. It requires to be stated that the respondent No.1 was Incharge of the Police Station and he was superior officer. After getting orders from the 33rd Metropolitan Magistrate, it was his duty to assign the matter to his subordinate and accordingly he has handed over the said investigation to Mr. Kasbekar immediately. Mr. Kasbekar immediately took steps and recorded statements of the respondent No.1, his witnesses and had registered Crime No.5 and 6 of 2001 in both the cases. Only that thereafter he prepared report on 21.1.2001 and submitted it to the Chief Police Prosecutor and also to the Sr. Inspector which was transmitted to the Asstt. Commissioner, Kalbadevi. Thereafter, according to the appellant, on 1.2.2001 it was transmitted to the 33rd Metropolitan Magistrate Court. No doubt, it is a fact that on 31.5.2001 the said report was not

available with the Magistrate's court. However, explanation offered was that the papers were given to the court clerk and the said court was vacant from 29.9.2000 to 9.6.2001 and therefore, the papers were not placed before the court. However, immediately after the fact was disclosed that the report was not available with the Magistrate and the respondent is insisting for such report, immediately compliance was made by the appellant. What is pertinent to note is that had there been any ill intention on the part of the appellant, then in that circumstances, on 7.4.2001 the appellant would not have informed the respondent No.1 that the report had been submitted to the Metropolitan Magistrate Court. On the contrary, by way of abundant precaution, on 7.4.2001 it was informed by the appellant to the respondent that the report had been submitted to the 33rd Metropolitan Magistrate. Inspite of the said fact, the respondent No.1 moved the Magistrate on 31.5.2000 to ascertain the said fact and as earlier stated, report was resubmitted, as per respondent No.1, on 1.6.2001. But we find that the respondent No.1 being an Advocate was interested in protecting his property and was equally interested in booking the accused persons in the said crime. The said cases were filed with the ill intention and motive and in the backdrop of the circumstances that there was

an order of the Small Causes Court directing respondent to vacate the said premises by particular date and therefore, repeated complaints were lodged with the police station and all the while explanation of the police station and the superior officers was being asked by the respondent No.1. What we find is that there is sufficient diligence on the part of the police Officers and especially the appellant in obeying orders of 33rd Metropolitan Magistrate. There are some laches, but those can be attributed to the administrative machinery and we cannot blame the investigating machinery when basically the law does not contemplate any period for investigation and the only thing what is contemplated is that police machinery set in motion shall act diligently and cautiously. But, we have seen that the complaints in this case were vague, without any particulars. Apart from that, what we find is that so called offences were committed in respect of the property which was on the second floor of the said building. Therefore, the probable witnesses who can know the incidents and which are involved in the case are staying and are in occupation of the said floor of the building and the employees who were working in the said building and the visitors of the respondent No.1. Therefore, in order to investigate this crime, it was not necessary to go elsewhere and from the case papers

we have noticed that since 1995, from time to time, whenever the investigation has been carried out as shown earlier, the police have recorded the statements of the occupants of the said building for preparing report. Not only that, they have also insisted, since it was found that the witnesses examined have not supported the respondent No.1, that the respondent No.1 shall produce another witnesses from the said building or from his visitors to support his case. At no point of time when statement of respondent No.1 was recorded, the respondent no.1 had stated the names of the witnesses so that police officers could have examined those witnesses. No doubt, law does not require that at the time of lodging the complaint the complainant should disclose the names of the witnesses. It is expected from the respondent No.1 to disclose the names of the witnesses or incorporate their names in the complaint, but the respondent No.1 has not disclosed the names of the witnesses either in his complaint or in his statement. Therefore, it was improper to blame police on the ground that police have not properly and diligently investigated the crime. In the present case what we find is that the police machinery had acted diligently and cautiously as it was answerable and required to report the matter to the Metropolitan Magistrate. In one case report was made even though

there were no directions to reinvestigate and still investigation had been carried out and the report had been submitted. It is possible that the complainant may not be satisfied on the report submitted by the police to the Metropolitan Magistrate. It is equally possible that the Metropolitan Magistrate may not be satisfied with the report submitted by the police. Law permits the Magistrate to take cognizance of the crime however, instead of doing that repeatedly the Metropolitan Magistrate has directed the investigation of the crimes which had ultimately resulted into unwarranted civil contempt petition, which has given rise to the present appeal. On facts of the case as we have analysed, we find that the appellant has not committed any disobedience of the order of the court and he has discharged his duty diligently. Mr. Kasbekar has carried out the investigation properly and this was not the case for treating appellant guilty for contempt of court. We find that there is substance in the appeal and therefore, we allow this appeal and pass the following order.

13. At this stage, party in person tried to invite our attention that when the Single Judge had found appellant guilty of the Contempt of court and called upon him in the witness box and asked as to what

appellant has to state in respect of the punishment, the appellant had stated that he is having unblemish service. The respondent no.1 pointed out that the said statement made by the appellant before the Single Judge is incorrect and he was twice suspended and salary cut was effected and thus, he has made wrong statement before the Single Judge and therefore, action should be taken. The respondent No.1 further submitted that the present order shall not affect the Civil Application No.1/2004 pending for that purpose filed before the Single Judge. We make it clear that we have dealt with the main appeal and we have found that appellant is not guilty of any contempt of the court. In the light of these observations, whatever may be the fate of that civil application, it may be considered by the Single Judge. Then respondent No.1 made another request that order passed by this court in the main appeal may be stayed. We are not inclined to stay the order and the prayer made by the respondent to that effect is rejected.

ORDER

a) Appeal is allowed.

b) The order of conviction dated 23.1. 2003 and sentence of fine is hereby quashed and set aside. The fine amount deposited by the appellant is hereby directed to be refunded to the appellant.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**